6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0501; FRL- 9979-79-Region 4]

Air Plan Approval; North Carolina:

New Source Review for Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environmental Quality (NC DEQ) through the Division of Air Quality (DAQ), to EPA on October 17, 2017. This SIP submittal modifies North Carolina's Prevention of Significant Deterioration (PSD) regulations and includes the adoption of specific federal provisions needed to meet the New Source Review (NSR) permitting program requirements for the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). In addition, North Carolina's October 17, 2017, SIP submittal addresses portions of the PSD requirements for the infrastructure SIPs for the following NAAQS: 1997 Annual and 24-hour $PM_{2.5}$, 2006 24-hour $PM_{2.5,}$ 2008 lead, 2008 8-hour ozone, 2010 sulfur dioxide (SO_2), 2010 nitrogen dioxide (NO_2) and 2012 Annual $PM_{2.5}$. As a result of this proposed approval of North Carolina's modified PSD regulations, EPA is also proposing to approve North Carolina's submittal with respect to the related PSD infrastructure SIP requirements for these NAAQS. As discussed in this notice, EPA previously disapproved portions of earlier submittals from North Carolina that were intended to meet these requirements. These proposed approvals, if finalized, will remove

EPA's obligation to promulgate a Federal Implementation Plans (FIP) to meet the relevant Clean Air Act (CAA or Act) requirements.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0501 at http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

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SUPPLEMENTARY INFORMATION:

I. What are the Actions EPA is Proposing?

II. Fine Particulate Matter and the NAAQS

I. What are the Actions EPA is Proposing?

EPA is proposing two actions with regard to North Carolina's SIP submittal updating the State's PSD regulations found at 15A North Carolina Administrative Code (NCAC) 02D .0530.[1] First, EPA is proposing to approve North Carolina's October 17, 2017, SIP submittal with regard to changes to the State's regulation at 15A NCAC 02D .0530 because EPA has preliminarily

[1] North Carolina's preconstruction permitting program for new and modified stationary sources is codified at 15A NCAC Subchapter 02D. Specifically, North Carolina's PSD preconstruction regulations are found at 15A NCAC 02D .0530 and apply to major stationary sources or modifications constructed in areas designated attainment or unclassifiable for the NAAQS, as required under part C of title I of the CAA. North Carolina's nonattainment new source review (NNSR) regulations are found at 15A NCAC 02D .0531 and apply to the construction and modification of any major stationary source of air pollution located in or impacting a NAAQS nonattainment area, as required by part D of title I of the CAA. This proposed action does not relate to North Carolina's NNSR regulations, which are already fully approved into North Carolina's SIP.

determined that the State's changes fully meet the requirements of EPA's rulemaking, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)," Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the "2010 PSD $PM_{2.5}$ Rule").

Second, as a result of the proposed approval of North Carolina's October 17, 2017, SIP submittal for these PSD requirements, EPA is proposing to approve this submittal for portions of the infrastructure SIP PSD elements for the following NAAQS: 1997 Annual and 24-hour $PM_{2.5}$, 2006 24-hour $PM_{2.5,}$ 2008 lead, 2008 8-hour ozone, 2010 SO_2, 2010 NO_2 and 2012 Annual $PM_{2.5}$.[2, 3]

II. Fine Particulate Matter and the NAAQS

As described in EPA's May 10, 2016 (81 FR 28801), proposal action to partially approve and partially disapprove revisions to North Carolina's SIP with regard to the State's NSR permitting regulations for $PM_{2.5}$, "particulate matter," also known as particle pollution or PM, is a complex mixture of extremely small particles and liquid droplets that can affect the heart and lungs and cause serious health effects. EPA currently regulates PM according to two size categories: PM_{10}, which comprises all particles smaller than or equal to 10 micrometers in diameter and includes "inhalable coarse particles," and $PM_{2.5}$, also known as "fine particles," which comprises all particles smaller than or equal to 2.5 micrometers in diameter.

[2] North Carolina's October 17, 2017, SIP submittal requested approval of the PSD infrastructure SIPs for the 2008 lead, 2008 8-hour ozone, 2010 SO_2, 2010 NO_2 and the 2012 $PM_{2.5}$ NAAQS. On April 16, 2018, the State submitted a letter to EPA clarifying that the same submittal is intended to satisfy the PSD elements of the State's infrastructure SIP submittals for the 1997 and 2006 $PM_{2.5}$ NAAQS as well.

[3] The background for various NAAQS is provided in EPA's proposed and final rulemaking entitled "Air Plan Approval and Disapproval; North Carolina: New Source Review for Fine Particulate Matter (PM2.5)." *See* 81 FR 28797 (May 10, 2016) and 81 FR 63107 (September 14, 2016).

The CAA requires EPA to set air quality standards to protect both public health and the public welfare (*e.g.*, visibility, crops and vegetation). Particle pollution, especially fine particles, affects both. The human health effects associated with long- or short-term exposure to $PM_{2.5}$ are significant and include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits) and development of chronic respiratory disease. In addition, welfare effects associated with elevated $PM_{2.5}$ levels include visibility impairment as well as effects on sensitive ecosystems, materials damage and soiling and climatic and radiative processes.

Since July 1, 1987, EPA had used PM_{10} as an indicator for the PM NAAQS. *See* 52 FR 24634. On July 18, 1997, EPA amended the PM NAAQS by adding new standards that focus on fine particles, using $PM_{2.5}$ as the indicator. *See* 62 FR 38652. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting the annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour standard at a level of 65 $\mu g/m^3$ (the "1997 Annual and 24-hour $PM_{2.5}$ NAAQS"). EPA established welfare-based (secondary) standards identical to the primary standards. *Id*. On October 17, 2006, EPA revised the primary and secondary NAAQS for $PM_{2.5}$. *See* 71 FR 61236. In that rulemaking, EPA reduced the 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ (the "2006 24-hour $PM_{2.5}$ NAAQS") and retained the existing annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. *Id*. On January 15, 2013, EPA revised the primary NAAQS but not the secondary NAAQS for $PM_{2.5}$. *See* 78 FR 3086. In that rulemaking, EPA reduced the annual NAAQS for $PM_{2.5}$ to 12 $\mu g/m^3$ (the "2012 Annual $PM_{2.5}$ NAAQS"[4]) and retained the existing 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$.

III. What is the Background for these Proposed Actions?

[4] Signed by the EPA Administrator on December 14, 2012.

A. Requirements of the 2010 PSD $PM_{2.5}$ Rule for PSD SIP Programs

As established in part C of title I of the CAA, EPA's PSD program protects public health and welfare from adverse effects of air pollution by ensuring that construction of new major sources or modifications in attainment or unclassifiable areas does not lead to significant deterioration of air quality while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." In other words, when a source applies for a permit to emit a regulated air pollutant in an area that is designated as attainment or unclassifiable for a NAAQS, the state and EPA must determine if the source's emissions of that pollutant will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum allowable increase" of an air pollutant allowed to occur above the applicable baseline concentration[5] for that pollutant. Therefore, an increment is the mechanism used to estimate "significant deterioration" of air quality for a pollutant in an area.

EPA finalized the 2010 PSD $PM_{2.5}$ Rule to provide additional regulatory requirements under the PSD SIP program regarding the implementation of the $PM_{2.5}$ NAAQS. *See* 75 FR 64864. The 2010 PSD $PM_{2.5}$ Rule required states to submit SIP revisions to EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the PSD increments and associated implementing regulations. Specifically, the 2010 PSD $PM_{2.5}$ Rule requires states to

[5] Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the ambient concentration levels which exist at the time of the first application for a PSD permit in the area after the applicable baseline date.

adopt and submit for EPA approval into their SIP the numerical $PM_{2.5}$ increments promulgated pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. States are also required to adopt and submit for EPA approval revisions to the definitions for "major source baseline date," "minor source baseline date," and "baseline area" as part of the implementing regulations for the $PM_{2.5}$ increment.

For purposes of calculating increment consumption, a baseline area for a particular pollutant includes the attainment or unclassifiable area in which the source is located and any other attainment or unclassifiable area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in a significant ambient pollutant increase. *See* 40 CFR 51.166(b)(15)(i). Once the baseline area is established, subsequent PSD sources locating in that area need to consider that a portion of the available increment may have already been consumed by previous emission increases.

In general, the submittal date of the first complete PSD permit application in a particular area is the operative "baseline date," after which new sources must evaluate increment consumption.[6] On or before the date of the first complete PSD application, existing ambient concentration levels of a pollutant generally are considered to represent the baseline concentration from which increment consumption is calculated, except for certain changes in ambient concentration levels caused by emission changes from construction at major stationary sources. Increases in ambient concentration levels caused by emission increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly,

[6] Baseline dates are pollutant-specific. That is, a complete PSD application establishes the baseline dates only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

decreases in ambient concentration levels caused by emission decreases that occur after the applicable baseline date either restore or expand the amount of increment available.

In practice, three dates related to the PSD baseline concept are important in understanding how to calculate the amount of increment consumed—(1) trigger date; (2) major source baseline date; and (3) minor source baseline date. The trigger date, as the name implies, is a fixed date that initiates the overall increment consumption process nationwide. *See* 40 CFR 51.166(b)(14)(ii). The "major source baseline date" and the "minor source baseline date" are necessary to properly account for the increment-affecting emissions occurring after the trigger date, in accordance with the statutory definition of "baseline concentration" in section 169(4) of the Act. The "major source baseline date," which precedes the trigger date, is the date after which actual changes in emissions associated with construction at any major stationary source affect the PSD increment. Ambient concentration levels associated with such changes in emissions are not included in the baseline concentration, even if the changes in emissions occur before the minor source baseline date. In accordance with the statutory definition of "baseline concentration" at section 169(4), the PSD regulations define a fixed date, related to the increments that EPA established for a particular pollutant, to represent the major source baseline date for that pollutant. The "minor source baseline date," which is also pollutant-specific, is the earliest date after the trigger date on which a source or modification submits the first complete application for a PSD permit in a particular area. This is the date on which the baseline concentration associated with a particular increment generally is established. After the minor source baseline date, any ambient concentration level changes caused by a change in actual emissions (from both major and minor sources) affects the PSD increment for that area.

Once the minor source baseline date is established, the ambient pollutant concentration level increase caused by a proposed emission increase from the major source submitting the first PSD application consumes a portion of the increment in that area, as do any subsequent ambient concentration level increases caused by actual emission increases that occur from any new or existing source in the area. When the maximum pollutant concentration increase defined by the increment has been reached, additional PSD permits cannot be issued until sufficient amounts of the affected increment are "freed up" via emission reductions of the pollutant that may occur voluntarily (*e.g.*, via source shutdowns) or by mandatory control requirements imposed by the reviewing authority. Moreover, the overall air quality for a pollutant in a region cannot be allowed to deteriorate to a level in excess of the applicable NAAQS, even if all the increment in the area has not been consumed. Therefore, new or modified sources located in areas where the ambient pollutant concentration levels are near the level allowed by the NAAQS may not have full use of the amount of ambient concentration increase allowed by the increment.

In the 2010 PSD $PM_{2.5}$ Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for $PM_{2.5}$ as a new pollutant[7] for which NAAQS were established after August 7, 1977,[8] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III). *See* 75 FR 64869 and the ambient air increment table at 40 CFR 51.166(c)(1). EPA also established the $PM_{2.5}$ "trigger date" as October 20, 2011 (40 CFR 51.166(b)(14)(ii)(c)), and the $PM_{2.5}$ "major source baseline date" as October 20, 2010 (40 CFR 51.166(b)(14)(i)). *See* 75 FR 64903. Finally, EPA amended the term "baseline area" at 40

[7] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the Annual and 24-hour NAAQS for PM_{10} (retaining PM_{10} as an indicator of coarse particulate matter) and treated $PM_{2.5}$ as a new pollutant for purposes of developing increments. *See* 75 FR at 64864.

[8] EPA interprets section 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

CFR 51.166(b)(15)(i) to include a level of significance of 0.3 $\mu g/m^3$, annual average, for establishing a new baseline area for purposes of $PM_{2.5}$ increments. *Id.*

On May 16, 2008 (73 FR 28321), EPA finalized the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (hereafter referred to as the "2008 NSR $PM_{2.5}$ Rule") to implement the 1997 $PM_{2.5}$ NAAQS for the NSR permitting program. The 2008 NSR $PM_{2.5}$ Implementation Rule revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. Among other things, the 2008 NSR $PM_{2.5}$ Rule directed states to incorporate into their SIPs the requirement for applicability determinations and emission limits in PSD and NNSR permits to account for gases that condense to form particles (condensable PM).

B. Requirements for Infrastructure SIPs

By statute, states are required to have SIPs that provide for the implementation, maintenance, and enforcement of the NAAQS. States are further required to provide a SIP submittal meeting the applicable requirements of sections 110(a)(1) and (2) within three years after EPA promulgates a new or revised NAAQS.[9] EPA has historically referred to this type of submission as an "infrastructure SIP." Sections 110(a)(1) and (2) require states to submit infrastructure SIPs that address basic program elements, such as air quality planning, permitting, and enforcement requirements and legal authority, that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIP submittals. Section

[9] *See* EPA's proposed approval of North Carolina's December 4, 2015, infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS for a discussion on EPA's general approach to reviewing infrastructure SIPs. 81 FR 47314, 47316-18, July 21, 2016.

110(a)(2) lists specific elements that states must meet to satisfy the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submittal may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's existing EPA approved SIP at the time when the state develops and submits the infrastructure SIP submittal for a new or revised NAAQS.

This action pertains to certain PSD-related infrastructure SIP requirements of section 110(a)(2)(C), 110(a)(2)(D)(i)(II) and 110(a)(2)(J), which are relevant in the context of a state's development of, and EPA's evaluation of, infrastructure SIP submittals. With the exception of these PSD-related requirements of section 110(a)(2) of the CAA, EPA has already approved or will consider in separate actions all other elements of North Carolina's infrastructure SIP submittals related to the 1997 Annual and 24-hour $PM_{2.5}$, 2006 24-hour $PM_{2.5,}$ 2008 lead, 2008 8-hour ozone, 2010 SO_2, 2010 NO_2, and 2012 Annual $PM_{2.5}$ NAAQS.

C. EPA's Previous Action on North Carolina's SIP Submittal Related to the 2010 PSD $PM_{2.5}$ Rule

On September 5, 2013, DAQ submitted a SIP revision in response to EPA's 2010 PSD $PM_{2.5}$ Rule. On September 14, 2016 (81 FR 63107), EPA disapproved the portions of that submittal that pertain to the adoption and implementation of the $PM_{2.5}$ increments because the revision did not fully meet the requirements of the 2010 PSD $PM_{2.5}$ Rule. This action addresses only those portions of North Carolina's NSR SIP submittals and various infrastructure SIP submittals that EPA disapproved in the September 14, 2016, final action.[10] Specifically,

[10] EPA's September 14, 2016, action approved the following portions of the SIP submittals from North Carolina:

although paragraphs (e), (q) and (v) of North Carolina's revised PSD regulations at 15A NCAC 02D .0530 incorporated the federally-required numerical $PM_{2.5}$ increments, North Carolina's regulations failed to include other federally-required provisions needed to implement the $PM_{2.5}$ increments, including (1) the definition of "[m]ajor source baseline date" for $PM_{2.5}$ codified at 40 CFR 51.166(b)(14)(i)(c) (defined as October 20, 2010); (2) the definition of "[m]inor source baseline date" for $PM_{2.5}$ codified at 40 CFR 51.166(b)(14)(ii)(c) (which establishes the $PM_{2.5}$ trigger date as October 20, 2011); and (3) the definition of "[b]aseline area" codified at 40 CFR 51.166(b)(15)(i). Without these definitions, North Carolina's PSD regulations did not require PSD sources to conduct the appropriate analyses demonstrating that emissions from proposed construction of new major stationary sources or major modifications will not cause or contribute to air quality deterioration beyond the amount allowed by the $PM_{2.5}$ increments. Therefore, EPA disapproved all of the $PM_{2.5}$ increment provisions set forth in North Carolina's September 5, 2013, SIP submittal, including all of the $PM_{2.5}$-related changes to 15A NCAC 02D .0530 at paragraphs (e), (q), and (v). *Id.* Under section 110(c)(1)(B), these disapprovals started a two-year clock for EPA to promulgate a FIP to address the PSD $PM_{2.5}$ program deficiencies.

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(1) A May 16, 2011, submittal (as revised and updated by the State's September 5, 2013, SIP submittal) as meeting the requirements of EPA's rule, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," Final Rule, 73 FR 28321 (May 16, 2008);

(2) Administrative changes to North Carolina's PSD and NNSR regulations at 15A NCAC 02D .0530 and 15A NCAC 02D .0531 provided by the State in a SIP submittal also dated May 16, 2011, including clarification of the applicability of best available control technology (BACT) and lowest achievable emission rate (LAER) for electrical generating units (EGUs) in the State, and the inclusion of an additional Federal Land Manager (FLM) notification provision; and

(3) Portions of the PSD elements of North Carolina's infrastructure SIP submittals for various NAAQS as indicated.

D. EPA's Previous Action on North Carolina's SIP Submittals Related to Infrastructure SIP PSD Elements

In addition to disapproving the portions of North Carolina's September 5, 2013, SIP submittal pertaining to $PM_{2.5}$ increments, EPA's September 14, 2016, action partially approved and partially disapproved the following North Carolina infrastructure submittals for PSD elements: 1997 Annual and 24-hour $PM_{2.5}$ NAAQS (dated April 1, 2008); 2006 24-hour $PM_{2.5}$ NAAQS (dated September 21, 2009); 2008 lead NAAQS (received on July 20, 2012); 2008 8-hour ozone NAAQS (received on November 2, 2017); 2010 SO_2 NAAQS (received March 18, 2014); 2010 NO_2 NAAQS (received on August 23, 2013); and 2012 Annual $PM_{2.5}$ NAAQS (received on December 4, 2015). The partial disapproval was limited to the $PM_{2.5}$ increment requirements of the 2010 $PM_{2.5}$ Rule for these infrastructure SIP submittals. Under section 110(c)(1)(B), these disapprovals started a two-year clock for EPA to promulgate a FIP to address these infrastructure SIP deficiencies.

IV. What is EPA's Analysis of North Carolina's October 17, 2017, SIP Submittal for PSD?

On October 17, 2017, North Carolina provided a SIP revision to correct the deficiencies EPA had identified in the State's September 5, 2013, SIP submittal related to the adoption of the $PM_{2.5}$ increments. The relevant federal $PM_{2.5}$ permitting requirements for SIPs, set forth in 40 CFR 51.165 and 51.166, were promulgated by EPA in the 2010 PSD $PM_{2.5}$ Rule. States were required to make their SIP submittals to address the requirements of the 2010 PSD $PM_{2.5}$ Rule no later than July 20, 2012. North Carolina's October 17, 2017, SIP submittal adopts changes in the State's PSD permitting program at 15A NCAC 02D .0530 by incorporating by reference EPA's PSD regulations as of July 1, 2014. This incorporation by reference includes the federally-

required provisions of EPA's 2010 PSD $PM_{2.5}$ Rule needed to implement the PSD $PM_{2.5}$ program in North Carolina. Adopting the federal rule as of July 1, 2014, has the effect of adding to the North Carolina SIP the required definitions of "major source baseline date," "minor source baseline date," and "baseline area" that were lacking in the State's previous $PM_{2.5}$ submittals.

This incorporation by reference as of July 1, 2014, also captures EPA's October 25, 2012 (77 FR 65107), amendment to the definition of "regulated NSR pollutant" concerning condensable particulate matter. In that action, EPA amended the definition of "regulated NSR pollutant" to remove an inadvertent general requirement of the 2008 NSR $PM_{2.5}$ Rule to include the condensable portion of PM when measuring emissions-related indicators of "PM emissions" in the context of the NSR regulations. Under the revised definition, $PM_{2.5}$ and PM_{10} emissions must include the condensable portion of particulate matter, but not PM emissions.[11] Because North Carolina's current federally-approved NSR rule (a portion of which was approved by EPA's September 14, 2016, action) adopts the PSD definitions in the CFR as of May 16, 2008, it currently requires sources to account for the condensable fraction in the measurement and regulation of "PM emissions" (as well as "$PM_{2.5}$ emissions" and "PM_{10} emissions"). By adopting the PSD definitions in the CFR as of July 1, 2014, the revised rule would continue to require sources to account for the condensable fraction in the measurement of "$PM_{2.5}$ emissions" and "PM_{10} emissions" but not "PM emissions." As discussed in EPA's May 10, 2016 (81 FR 28801), proposed action, requiring the inclusion of condensable PM in measurements of "PM emissions" has little if any effect on preventing significant air quality deterioration or on efforts to attain the primary and secondary PM NAAQS. Therefore, North Carolina's incorporation by

[11] The October 25, 2012, final rule retained the general requirement to include the condensable fraction of PM_{10} and $PM_{2.5}$ emissions in each case for purposes of NSR permitting under EPA's regulations at 40 CFR 51.166(b)(49)(i), 40 CFR 52.21(b)(50)(i), 40 CFR 51.165(a)(1)(xxxvii), and 40 CFR part 51 Appendix S.

reference of EPA's PSD regulations as of July 1, 2014, is not only consistent with the current federal rule, but it also will not interfere with North Carolina's efforts to prevent significant deterioration of air quality and to attain and maintain compliance with the PM NAAQS.[12]

V. What is EPA's Analysis of North Carolina's October 17, 2017, SIP Submittal for the Infrastructure SIP PSD Elements?

North Carolina's October 17, 2017, SIP submittal addresses certain NSR/PSD requirements, as described above, and thereby meets the related infrastructure SIP requirements of section 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). For the remainder of this proposed rulemaking, EPA's intent in referring to "PSD elements" is to address the PSD requirements in sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). More detail regarding the aforementioned 110(a)(2) requirements related to PSD is provided in the discussion that follows.

Section 110(a)(2)(C) has three components that must be addressed in infrastructure SIP submittals: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and PSD permitting of new major sources and major modifications in areas designated attainment or unclassifiable as required by CAA title I part C (i.e., the major source PSD program). Regarding section 110(a)(2)(C), this proposed action only addresses North Carolina's infrastructure SIP submittals with respect to the major source PSD program.

[12] EPA also notes that the version of EPA's PSD regulations incorporated by reference excludes the PSD $PM_{2.5}$ SILs provisions and SMC provisions, which EPA had promulgated in the 2010 PSD $PM_{2.5}$ Rule and later removed on December 9, 2013. The 2010 PSD $PM_{2.5}$ Rule gave states discretion to adopt $PM_{2.5}$ SILs and a SMC. *See* 75FR at 64900. On January 22, 2013, the DC Circuit vacated and remanded to EPA the portions of 50 CFR 51.166 and 52.21 addressing the $PM_{2.5}$ SILs and also vacated the parts of the rule that established the $PM_{2.5}$ SMC. On December 9, 2013 (78 FR 73698), EPA took final action amending its regulations to remove the $PM_{2.5}$ SILs and SMC provisions from the PSD regulations. However, since North Carolina's October 17, 2017, submittal does not include SILs or SMC, these regulatory provisions are not relevant to this proposed action.

Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submittals. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emission activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1") and from interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required in another state to prevent significant deterioration of air quality ("prong 3") or to protect visibility ("prong 4"). With regard to section 110(a)(2)(D)(i), this proposed action only addresses North Carolina's infrastructure SIP submittals for prong 3.

Section 110(a)(2)(J) has four components that must be addressed in infrastructure SIP submittals: (1) consultation with government officials; (2) public notification; (3) PSD; and (4) visibility protection. With regard to section 110(a)(2)(J), this proposed action only addresses North Carolina's infrastructure SIP submittals for PSD.

Regarding the PSD elements of sections 110(a)(2)(C) and (J), EPA interprets the CAA to require each state to make, for each new or revised NAAQS, an infrastructure SIP submittal that demonstrates that the state has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) (prong 3) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants.

As described in EPA's guidance dated September 13, 2013,[13] an infrastructure SIP submittal should demonstrate that one or more air agencies has the authority to implement a comprehensive PSD permit program under CAA title I part C for all PSD-subject sources located in areas that are designated attainment or unclassifiable for one or more NAAQS. EPA interprets the PSD elements to require that a state's infrastructure SIP submittal for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering all regulated NSR pollutants. A state's PSD permitting program is complete for the PSD elements if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all structural PSD requirements[14] that are due under the EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submittal.

On September 14, 2016, EPA partially approved and partially disapproved the PSD elements of North Carolina's infrastructure SIP submittals for the following NAAQS: 1997 Annual and 24-hour $PM_{2.5}$; 2006 24-hour $PM_{2.5}$; 2008 lead; 2008 8-hour ozone; 2010 NO_2; 2010 SO_2; and 2012 Annual $PM_{2.5}$. *See* 81 FR 63107. The partial disapproval was limited to the $PM_{2.5}$ increment requirements of the 2010 $PM_{2.5}$ Rule for these infrastructure SIP submittals. North Carolina submitted its October 17, 2017, SIP revision to EPA to correct the deficiencies in the State's PSD permitting program, and, as previously discussed, EPA is proposing to approve this SIP revision. If EPA's proposed action is finalized, North Carolina's SIP will include a complete PSD program that addresses all structural PSD requirements due under the CAA and EPA regulations. Because EPA proposes to approve North Carolina's SIP revisions for the PSD

[13] EPA's September 13, 2013, guidance, titled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)," provides advice on the development of infrastructure SIPs for the 2008 ozone NAAQS, the 2010 nitrogen dioxide NAAQS, the 2010 sulfur dioxide NAAQS, and the 2012 $PM_{2.5}$ NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.
[14] Structural PSD program provisions include provisions necessary for the PSD program to address all regulated sources and regulated pollutants but do not include provisions under 40 CFR 51.166 that are considered optional.

program, it is also proposing approval of the October 17, 2017, submittal for the PSD infrastructure SIP requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) for the 2008 lead NAAQS, 2008 ozone NAAQS, 2010 SO_2 NAAQS, 2010 NO_2 NAAQS, and 1997, 2006 and 2012 $PM_{2.5}$ NAAQS.[15]

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference North Carolina's regulations 15A NCAC 02D .0530, entitled "Prevention of Significant Deterioration," effective September 1, 2017. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and in hard copy at the EPA Region 4 office (see the ADDRESSES section of this preamble for more information).

VII. Proposed Actions

EPA is proposing to approve changes to the North Carolina SIP, provided by the NC DEQ, to EPA on October 17, 2017. These changes modify North Carolina's NSR permitting regulations codified at 15A 02D .0530 – *Prevention of Significant Deterioration* and include the adoption of some federal requirements respecting implementation of the $PM_{2.5}$ NAAQS through the NSR permitting program. Specifically, EPA is proposing to approve North Carolina's October 17, 2017, SIP submittal as it relates to the requirements to comply with EPA's 2010 PSD $PM_{2.5}$ Rule. EPA also notes that North Carolina's incorporation by reference of EPA's PSD

[15] EPA has already approved or will consider in separate actions all other elements from North Carolina infrastructure SIP submissions related to the 2008 lead, 2008 8-hour ozone, 2010 NO_2, 2010 SO_2 NAAQS, and 1997, 2006 and 2012 $PM_{2.5}$ NAAQS.

regulations as of July 1, 2014, includes EPA's amendment to the definition of "regulated NSR pollutant" concerning condensable PM promulgated on October 25, 2012.

If EPA finalizes all of the actions proposed in this notice, the version of 15A NCAC 02D .0530 (PSD) that became effective in the State on September 1, 2017, will be incorporated into North Carolina's SIP. As a result of the proposed approval of North Carolina's October 17, 2017, SIP submittal, EPA is also proposing to approve portions of the PSD elements of North Carolina's infrastructure SIP submittals (*i.e.*, CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J)) for the 1997 Annual and 24-hour $PM_{2.5}$, 2006 24-hour $PM_{2.5,}$ 2008 lead, 2008 8-hour ozone, 2010 SO_2, 2010 NO_2 and the 2012 Annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed approval action, that final action will remove EPA's obligation under section 110(c) to promulgate a FIP to address the $PM_{2.5}$ increments requirements of EPA's 2010 PSD $PM_{2.5}$ Rule PSD and the related PSD elements for the above listed infrastructure SIPs.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 12, 2018.

Onis "Trey" Glenn, III,

Regional Administrator,

Region 4.

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